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HAITI

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CONTENTS

		Paragraphs	Page
Introduction		1	2
I.	General	2 - 4	2
II.	Information relating to each of the articles of the Covenant within the present context	5 - 23	2
	Article 6	5 - 7	2
	Article 7	8 - 9	3
	Article 8	10	3
	Article 9	11 - 15	3
	Article 10	16 - 18	4
	Article 14	19 - 23	5
III.	The situation of the victims of human rights violations during the three years of military Government	24 - 29	6
	A. The goals of the Commission	25	6
	B. The Commission's mandate	26	6
	C. Follow-up to the Commission's work	27 - 29	7

* By a decision of 27 October 1994, the Committee requested Haiti to submit a report on the situation in the country as a matter of urgency.

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Introduction

1. The Republic of Haiti has prepared this summary report in conformity with article 40 of the International Covenant on Civil and Political Rights. The report, which is necessarily summary, endeavours to describe the actual situation in Haiti following the restoration of constitutional government. Previously, i.e. before 15 October 1994, those responsible for the military coup of 30 September 1991 and the successive de facto Governments systematically violated the rights recognized by the Covenant. The various reports by national and international human rights organizations present in Haiti during the three years of military Government describe thousands of instances of summary execution, arbitrary arrest, torture, sexual abuse and other inhuman or degrading treatment. 1/ This report describes the current legal framework, three months after the restoration of the rule of law, and the efforts made by the Government to implement the provisions of the Covenant, and in particular articles 6, 7, 8, 9, 10 and 14.

I. GENERAL

2. The rights enshrined in the International Covenant on Civil and Political Rights are recognized and guaranteed by the Constitution of the Republic of Haiti, and in particular by section III thereof, as well as by the various laws referred to in this summary report on each of the articles mentioned above.

3. Under the Republic of Haiti's legal system, the Constitution takes precedence over any other source of law. The current Constitution was adopted in 1987. Once international treaties or agreements have been approved and ratified in the manner specified by the Constitution, they become part of Haitian legislation and abrogate any contrary law.

4. Consequently, the International Covenant on Civil and Political Rights, which was approved and ratified by the instrument of 6 February 1991, has been an integral part of the domestic legislation of the Republic of Haiti since 6 May 1991, when it came into force. This is also the case with the optional protocols to the Covenant.

II. INFORMATION RELATING TO EACH OF THE ARTICLES OF THE COVENANT WITHIN THE PRESENT CONTEXT

Article 6

5. There is no provision for the death penalty under Haitian legislation, as made clear in article 20 of the Constitution which stipulates that "the death penalty is completely abolished".

1/ The Haitian Human Rights Forum; the United Nations/OAS International Civilian Mission to Haiti; the reports by the United Nations Expert, Mr. Bruni Celli.

6. Article 19 of the Constitution stipulates that "The State has the absolute obligation to guarantee the right to life and health and respect of the human person." In conformity with this article, measures have been adopted to prevent or restrict the use of firearms, because under the de facto Governments thousands of persons carried unlicensed weapons.

7. The Government lacks the means effectively to conduct a permanent child health campaign on account of the deplorable situation inherited from the military government.

Article 7

8. Article 25 of the Constitution reads as follows: "Any unnecessary use of force or restraint in apprehending a person or holding him in custody, or any psychological pressure or physical brutality, especially during interrogation, is forbidden."

9. In addition, articles 46 and 47 of the Constitution stipulate: "In the case of correctional or minor offences, no one may be compelled to testify against himself or his relatives to the fourth degree of consanguinity or the second degree by marriage" (art. 46); "No one may be compelled to take an oath except in those cases and in the manner specified by law" (art. 47).

Article 8

10. There has never been any slavery in the Republic of Haiti.

Article 9

11. The right to liberty and security of person is a fundamental right which is guaranteed by the Constitution, whose article 24 stipulates that "individual liberty is guaranteed and protected by the State".

12. Conditions of arrest. "No one may be prosecuted, arrested or detained except in the cases determined by law and in the manner it prescribes" (art. 24-1). "Except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official." In order to be enforceable, the order must "formally state in Creole and in French, the reason or reasons for the arrest or detention and the provision of the law that provides for punishment of the act charged; legal notice must be given and a copy of the order must be left with the accused at the time of its execution; the accused must be notified of his right to be assisted by counsel at all phases of the investigation of the case up to the final judgement; except where the perpetrator of a crime is caught in the act, no arrest by warrant and no search may take place between six (6) p.m. and six (6) a.m.; responsibility for an offence is personal and no one may be arrested in the place of another".

13. The rights of persons arrested or held in custody. The Constitution stipulates that "No one may be interrogated without his lawyer or a witness of his choice being present" (art. 25-1); furthermore "No one may be detained for more than forty-eight (48) hours unless he has appeared before a judge competent to rule on the legality of the arrest and the judge has confirmed

the arrest in a reasoned decision" (art. 26), as indicated in article 9, paragraph 3 of the Covenant. If the arrest is ruled unlawful "the judge shall order the immediate release of the detainee and his decision shall be enforced at once regardless of whether an appeal or an application for judicial review has been made or a prohibition on enforcement issued" (Constitution, art. 26-2 and Covenant, art. 9, para. 4).

14. The right to compensation. Article 9, paragraph 5 of the Covenant stipulates that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. This provision is enforced by articles 27 and 27-1 of the Haitian Constitution: "Any violation of the provisions relating to individual liberty shall constitute an arbitrary act. The victim may, without the need for prior authorization, bring the matter before the competent courts in order to prosecute the instigators and perpetrators of the arbitrary act, regardless of their status and of the corps to which they belong" (art. 27). Furthermore, "State officials and employees are directly responsible under criminal, civil and administrative law for any acts they commit in violation of a person's rights. In such cases the State shall also bear civil liability."

15. The Government of the Republic of Haiti is currently endeavouring to ensure that its citizens are able to enjoy all of these rights in practice; a campaign to train numerous local magistrates has just been launched. The establishment and recruitment of a police force separate from the army is another major step in this direction.

Article 10

16. Article 44-1 of the Constitution stipulates that "the prison regime shall comply with norms designed to ensure respect for human dignity in conformity with the relevant legislation".

17. The Government believes that, first of all, the institution of a penal system based on modern principles of penal law and compatible with Haiti's material and human resources requires the preparation of a fundamental act incorporating all the relevant norms and principles and laying down general principles of implementation to be set out in a body of regulations. For this reason, it has revived its 1991 reform of the prison system establishing a number of institutions placed under the responsibility of the Ministry of Justice acting through the Government Commissioner.

18. Article 44 of the Constitution, relating to the separation of detained persons, stipulates that "detainees awaiting trial shall be held separately from those serving a sentence". The Government's reform bill provides for separate establishments for men and women. On premises where this is not possible, there will be completely separate sections so as to prevent any communication between detainees of the opposite sex. Establishments for juveniles shall be subject to special provisions.

Article 14

19. The Haitian Constitution contains specific provisions to protect the equality of citizens before the courts and tribunals and the right of anyone against whom a criminal charge is brought to a fair and public hearing by an independent tribunal: "All Haitians aged over 18, without distinction as to sex and civil status, may exercise their civil and political rights provided they meet all the other requirements laid down by the Constitution and by law" (art. 17). "Haitians are equal before the law, without prejudice to the advantages vested in Haitians by birth who have never given up their nationality" (art. 18).

20. Under article 175 of the Constitution: "Judges shall be appointed to the Court of Criminal Cassation by the President of the Republic from a list of three (3) persons per seat submitted by the Senate. Judges of the Court of Appeal and the Courts of First Instance shall be appointed from a list submitted by the relevant departmental assembly; justices of the peace shall be appointed from a list drawn up by the communal assemblies." Judges of the Court of Criminal Cassation, the Courts of Appeal and the Courts of First Instance may not be removed from office. They may be dismissed only if they are found guilty, by due legal process, of criminal abuse of office, or suspended only after a charge has been laid against them. They may not be given a new appointment without their agreement, even when they are promoted; their appointment may not be terminated during their period of office except in case of duly established physical or mental incapacity (art. 177).

21. "The position of judge is incompatible with any other salaried position, except teaching" (art. 179) and "the courts' hearings shall be public. However, they may be held in camera in the interest of public order and morals, by decision of the court" (art. 180).

22. In conformity with article 184-1, the law "provides for disciplinary measures against judges and officials of the prosecution department, with the exception of judges of the Court of Criminal Cassation who are subject to the jurisdiction of the High Court of Justice, for criminal abuse of office". The Senate may assume for itself the function of High Court of Justice. The proceedings of the High Court are conducted by the President of the Senate, assisted by the President and Vice-President of the Court of Criminal Cassation acting as Vice-President and Secretary respectively, unless judges of the Court of Criminal Cassation or officials of that same court's prosecution department are implicated in the charges, in which case the President of the Senate shall be assisted by two senators, one of whom shall be appointed by the accused; the said Senators shall not be entitled to vote (art. 185).

23. On account of the military coup d'état, it has not been possible to set up certain institutions, and in particular the regional bodies, as required by law. The judges currently in office were not all appointed in accordance with the Constitution, which now applies to all new appointments. As part of the reorganization of the judiciary, a magistrates' college is to be established in Haiti, in conformity with article 176 of the Constitution.

III. THE SITUATION OF THE VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE THREE YEARS OF MILITARY GOVERNMENT

24. As a State governed by the rule of law may not be built on impunity, but must be founded on the trust of its citizens in the supervision of the democratic operation of institutions, and in particular of the judicial system, and since national reconciliation may not be brought about without at the very least the truth about all the crimes committed during the period of military government (30 September 1991-14 October 1994) being made public, a National Commission on Truth and Justice has been established in Haiti by presidential decision, in order to ensure justice for the victims. The Commission has both goals and a mandate, and the assurance that its activities will be followed up.

A. The goals of the Commission

25. The Commission pursues the following goals:

(a) To make public the whole truth about the human rights violations and crimes committed inside Haiti and abroad, whenever such acts are imputed to the Haitian State and its agents, either by act or omission or were committed by paramilitary groups;

(b) In this connection, the Commission is to devote particular attention to the violations and crimes committed against women and in particular to politically-motivated acts of sexual abuse. It is also to turn its attention to the domestic displacement of populations;

(c) It will determine institutional and individual responsibility for those crimes and shed light on the existence, both past and present, of paramilitary groups and unlawful private armed groups operating with complete impunity, under the protection of the State, and systematically committing politically-motivated crimes;

(d) It will develop a detailed and objective understanding of the historical causes of such human rights violations in order to determine how the past is capable of influencing the present.

B. The Commission's mandate

26. The Commission has the following mandate:

(a) To draw up an exhaustive inventory of serious human rights violations, including the relevant details and circumstances, committed by agents of the Haitian State and/or by paramilitary groups acting under its protection, at its instigation or with its connivance, during the period from 30 September 1991, the date of the coup, to 15 October 1994, when the legitimate President was restored;

(b) To determine full responsibility for those violations and to attempt to identify the actual perpetrators, as well as the instigators, and to shed light on the methods and means employed as well as on complicity therein;

(c) To analyse a number of exemplary cases of serious human rights violations committed by agents of the State, by act or omission, or by paramilitary groups under the protection of the State, during the period prior to the departure of Jean-Claude Duvalier until 30 September 1991;

(d) To gather information, facts, and circumstantial and probatory evidence in order to identify the victims of all the violations and crimes referred to above and to clarify their position;

(e) To recommend juridical, political and administrative measures in a detailed report to be submitted to the President of the Republic, who will make it public.

C. Follow-up to the Commission's work

27. Establishment of an institution or mechanism, as part of the planned institutional reforms, responsible for continuing and completing the work of the Commission. The institution or mechanism could both work to satisfy the need of Haitian society as a whole for moral redress and set up and monitor machinery to provide individual redress for victims who have been identified and who are among the cases registered by the Commission. It could also be responsible for taking evidence on, receiving, investigating and drawing up an inventory of cases involving victims which it was not possible to investigate under the Commission's mandate, so as to permit, if appropriate, compensation and better justice for all. Lastly, it could be responsible for conducting a vast national education campaign on human rights and on the conclusions of the work of the Commission on Truth.

28. Establishment of an institution responsible for compiling all the documents and files gathered by the Commission in the course of its activities in order subsequently to permit access by the public, researchers and any person interested in the issue. In addition, the Commission should make provision to transmit to the relevant State agencies any information resulting from its work of use for judicial purposes.

29. The constitutional Government and the Commission undertake officially to publish and distribute the complete final report throughout Haiti and abroad, as widely as possible. In addition, a simplified version of the report should be prepared, in close cooperation with organizations for the advancement and protection of human rights, so as to ensure it becomes as widely known as possible among the population as a whole.